

Appl. No. : 10/648,024  
Filed : August 26, 2003

## REMARKS

Claims 1-24 remain pending in the above-identified application. Claims 1-3, 6, 13-15, and 18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Pichler et al. (U.S. Pub. No. 2004/0031635 A1). Claims 4-5 and 16-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pichler in view of Ashida et al. (U.S. Pub. No. 2002/0148662 A1). Claims 7-12 and 19-24 stand objected to as depending from a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

### Objection to the Specification

The specification stands objected to for improper “incorporation of essential material in the specification by reference to a foreign publication or patent.” Applicant respectfully traverses the present objection.

Applicant wishes to point out that there are no outstanding rejections or issues related to the sufficiency of the present specification. Thus, at this time, Applicant is not relying on the incorporation by reference of any subject matter. Rather, the specification fully supports all of the presently pending claims.

Applicant also respectfully directs the Examiner to MPEP § 201.13(II)(G) which states:

Applicant **may incorporate by reference** the foreign priority application by including a statement in the U.S. application-as-filed that such specifically enumerated foreign priority application is “**hereby incorporated by reference**.” The statement may appear in the transmittal letter. The inclusion of the incorporation by reference of the foreign priority application will permit an applicant to amend the U.S. application to include any subject in the foreign priority application without raising the issue of new matter. Thus the incorporation by reference statement can be relied upon to permit the entering of a portion of the foreign priority application into the U.S. application when a portion of the foreign priority application has been inadvertently omitted from the U.S. application, or to permit the correction of translation error in the U.S. application where the foreign priority application is in a non-English language.

(Emphasis added).

Applicant thus submits that the specification fully complies with the formal requirements regarding incorporation by reference.

Appl. No. : 10/648,024  
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### Rejections Under 35 U.S.C. § 102(e)

Claims 1-3, 6, 13-15, and 18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Pichler et al (the Pichler reference). Applicant respectfully traverses each of the rejections under § 102(e) as well as the characterizations of the Pichler reference as it pertains to the claimed inventions.

However, Applicant notes that 35 U.S.C. §§ 102(a) or 102(e) rejections can be overcome by antedating the filing date of the U.S. patent reference by submitting an affidavit or declaration under 37 C.F.R. § 1.131. See 37 C.F.R. § 1.131; see also M.P.E.P. §§ 715 and 2136.05. In order to expedite prosecution and allowance of this application, Applicant submits herewith a declaration by the inventor under 37 C.F.R. § 1.131 establishing that the date of reduction to practice is prior to the effective filing date of the Pichler reference.

#### The Effective Date of the Pichler Reference is August 13, 2002

A U.S. patent reference is effective prior art as of its earliest filing date upon which the reference may rely (i.e., the priority date). See M.P.E.P. § 2136.03. As evidenced on the front cover of the Pichler reference, the earliest filing date upon which the Pichler reference may rely is August 13, 2002, which corresponds to the filing date of the provisional patent application from which the Pichler reference claims priority.

#### The Attached § 1.131 Declaration Establishes That a Reduction to Practice Occurred Prior to August 13, 2002

As shown in the attached declaration, Applicant reduced to practice the subject matter of the presently claimed invention prior to July 16, 2002, antedating August 13, 2002, the effective date of the Pichler reference.

The attached declaration includes exhibits showing the arrangement illustrated in Figure 3 of the priority document from which the above-identified application claims priority. Further, Figure 3 in the above-identified application corresponds to Figure 3 in the priority document.

Accordingly, Applicant respectfully submits that the Pichler reference has been removed as an available reference under 35 U.S.C. §§ 102(a) or 102(e). Therefore, Applicant respectfully requests withdrawal of the § 102(e) rejections of Claims 1-3, 6, 13-15, and 18.

### Rejections Under 35 U.S.C. § 103(a)

Claims 4-5 and 16-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Pichler in view of Ashida et al. Applicant respectfully traverses the present rejection. However,

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as discussed above, Applicant respectfully submits that the Pichler reference has been removed as an available reference under 35 U.S.C. § 103(a) or 102(e) in view of the attached declaration under 37 C.F.R. § 1.131. Accordingly, Applicant respectfully requests withdrawal of the § 103(a) rejections of Claims 4-5 and 16-17.

### **CONCLUSION**

Applicant respectfully submits that this application is now in condition for allowance and such action is earnestly requested. Should there be any questions or issues that could be resolved via a telephone conversation, Applicant invites the Examiner to contact the undersigned at the number shown below. In addition, please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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